

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**G.G.M.C. PARKING, LLC**

**Employer**

**and**

**Case No. 29-RC-9348**

**LOCAL 819, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO**

**Petitioner**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Lewis Lieberman, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned:

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and the record shows that the Employer, a New York corporation with its principal office and place of business located at 1651 Ferry Avenue, New York, New York, and facilities located at 240-260 Willoughby Street and 121 DeKalb Avenue, Brooklyn, New York, has been engaged in the operation of various automobile parking facilities within the boroughs of Manhattan and Brooklyn, New York. During the past 12 months, which period is representative of its annual operations

generally, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000. During that same period, the Employer purchased, and received at its New York facilities, goods valued in excess of \$5,000 directly from points located outside the State of New York.

Based on the foregoing, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. The Employer operates 27 garages and parking lots, 21 in the borough of Manhattan, and 6 in the borough of Brooklyn, New York. With regard to the 21 garages and lots located in the borough of Manhattan, the employees at 19 of them are represented by Local 272, International Brotherhood of Teamsters, AFL-CIO (Local 272.) Of the remaining two Manhattan locations, the employees at one of them, a parking lot, are represented by Local 917, International Brotherhood of Teamsters, AFL-CIO (Local 917), while the employees at the other location are unrepresented. The Employer's bargaining relationships with both Local 272 and Local 917 extend back approximately 35 years.

With regard to the six Brooklyn locations, they are all relatively recently acquired operations. The Employer took over the operations of four of them, including the two petitioned-for facilities, in about August 1999. It took over the operation of the garage at the Brooklyn Academy of Music (BAM) sometime in about mid 1998, and began operating an adjacent garage (BAM East) in about mid 1999.

The Petitioner seeks an election among the approximately 11 working managers, assistant managers, parking attendants and cashiers employed at two of the Brooklyn garages: 240-260 Willoughby Street and 121 DeKalb Avenue. It appears that approximately 9 of these employees work at Willoughby Street and the remaining two, a cashier and parking attendant, work at DeKalb Avenue. The two facilities are located across the street from each other, and along with Caledonian Hospital, approximately 3 miles away, appear to be operated pursuant to a contract with the Brooklyn Hospital. Although the two petitioned-for locations appear to provide parking services for Brooklyn Hospital, it does not appear that the Employer treats them as one garage. Rather, the record shows that the Employer began operating them on different dates, and the Employer's witness generally appeared to refer to the Willoughby Street location as "Brooklyn Hospital" and the DeKalb Avenue facility as "DeKalb."

The Employer contends that the petitioned-for unit is an accretion to the bargaining unit represented by Local 272. However, it has not filed a unit clarification petition seeking a finding of an accretion and has not taken a position as to whether the remaining Brooklyn locations, or the unrepresented Manhattan location, should also be accreted to the Local 272- represented unit. By letter dated October 13, 1999, Local 272 disclaimed interest in representing the petitioned-for unit of employees. During the course of the hearing the Petitioner appeared to contend that the expired contract between the Employer and Local 272 had not been enforced. It thus maintained that Local 272- represented employees no longer constitute a homogenous unit with distinct terms and conditions of employment, or a unit to which the petitioned-for employees could be accreted. In its brief, it no longer argues that the bargaining unit represented by Local

272 is inappropriate. However, it maintains that the petitioned-for employees do not share such an overwhelming community of interest with the employees represented by Local 272 as to warrant their accretion to that unit.

The record shows that the Employer was formerly a member of the Metropolitan Garage Owners Association, Inc. (Association.) The Association and Local 272 were parties to a collective bargaining agreement effective from February 6, 1989, through February 5, 1992. Article 3, Section 2 of the agreement provides:

This Agreement shall apply to and be binding upon the Employer with respect to any and all employees of all parking establishments or locations owned, operated or managed by the Employer now or in the future in the City of New York and Nassau, Suffolk and Westchester Counties.

For reasons that are not clear from the record, in about the mid 1990's, the Employer ceased being a member of the Association. It appears that the Employer and Local 272 recently began negotiations for a contract to succeed the agreement that expired in 1992.

With regard to the employees at the 19 locations represented by Local 272, the Employer asserts that it has continued to abide by the terms of the expired contract. However, with Local 272's consent, it ceased making contributions to the health and welfare fund set forth in the agreement and provided health coverage, under another plan, to the employees at the 19 Manhattan facilities covered by the contract. The Employer also appears to have imposed the requirement that new employees work one year before they become eligible for health benefits, a term which is not set forth in the expired agreement. Further, the Employer has set initial wage rates and provided wage increases according to its own discretion. Robert Parente, the Employer's Operations Coordinator,

testified that in setting initial wage rates, he considers employees' past experience.<sup>1</sup> "A" employees (those hired prior to 1992) in the bargaining unit represented by Local 272 are paid \$13.00 per hour and higher, while "B" employees (those hired after 1992) receive an hourly rate of at least \$7.00. Employees at the 19 locations represented by Local 272 generally receive an hourly wage increase of 25 to 50 cents on their anniversary dates. However, they may, at the Employer's discretion, receive larger wage increases and are eligible for additional merit increases.

Although Parente asserted that virtually all the other provisions of the expired contract have been applied to unit employees at the 19 locations represented by Local 272, it is not clear from the record that this is the case. While it continues to contribute to the pension fund set forth in the expired contract, it does not appear to fully enforce the terms of the agreement pertaining to sick leave, holiday pay and vacations. Parente testified that all employees in the unit represented by Local 272 are entitled to 2 to 4 weeks of "benefit days" which may interchangeably include sick leave, vacations and personal days. However, the expired contract contained no reference to general benefit days. Although it contained separate provisions for sick leave and vacations, it did not state that employees could substitute one for the other.

The Employer maintains that it applies the terms of its contract with Local 272, including those concerning "benefit days" to the employees working at its Brooklyn facilities. However, it concedes that it does not contribute to the pension fund set forth in this agreement on behalf of Brooklyn employees. Moreover, although the Employer contends that employees at the two petitioned-for facilities are eligible for the same health benefits as employees represented by Local 272, since none have been employed for a year, none are receiving any health coverage at this time. In addition, it does not

---

<sup>1</sup> Parente states that he has asked Local 272 to refer applicants for new positions.

appear that Local 272 has sought to have its contract applied to any employees working in Brooklyn.

The record shows that the wage rates for the 11 petitioned-for employees range from \$7.00 per hour to \$9.00 per hour. Parente conceded that the wage rates of the manager at the Brooklyn Hospital location (\$9.00 per hour), a parking attendant at Brooklyn Hospital (\$7.50 per hour) and the cashier at DeKalb Avenue (\$7.00 per hour), differ from the wage rates earned by managers, parking attendants and cashiers working at locations represented by Local 272. It appears, however, that the manager at Brooklyn Hospital earns the same rate of pay formerly earned by the unrepresented manager at BAM.

With regard to supervision, for the most part it appears that there are no supervisors present at the various facilities to oversee employees on a moment by moment basis. Although the Brooklyn Hospital garage has a working manager, it is not clear whether the DeKalb Avenue garage employs its own manager, and the parties agree that working managers are not statutory supervisors or managerial employees and should be included in any unit found appropriate.<sup>2</sup> Working managers are responsible for overseeing the work on their shifts, resolving minor customer complaints, contacting customers regarding overdue bills, and performing various bookkeeping functions. Although managers may report work related infractions to the Employer, they do not have the authority to discipline employees, and there is no evidence that they have ever recommended discipline. Parente, who works out of his office on 92<sup>nd</sup> Street in Manhattan, testified that he is solely responsible for all hiring, firing, and discipline at the 27 locations. It appears that he and two supervisors, one a day supervisor and the other an evening supervisor, are responsible for all the day to day supervision of employees,

---

<sup>2</sup> Contrary to the Petitioner's assertion in its brief, there is no evidence on the record that the manager at Brooklyn Hospital also manages the facility at DeKalb Avenue. Nor does the record support the Petitioner's contention that each location has its own working manager or foreman.

including scheduling and transfers. The two supervisors spend most of their time visiting the various locations.

With respect to interchange, although transfers, both permanent and temporary, are frequent between employees located *within* the Local 272 represented unit,<sup>3</sup> there has been no interchange of employees, to date, among Brooklyn and Manhattan locations. It appears that there may be at least one maintenance employee who performs work in both Brooklyn and Manhattan. However, the record did not reveal the frequency with which he works at the different locations. At the time of the hearing, three employees working at Brooklyn locations had been transferred to other facilities located in Brooklyn. However, none of these transfers were confined to the two petitioned-for locations. One employee had been transferred from BAM to the DeKalb Avenue facility (one of the facilities covered by the petition), and then returned to BAM. Another had transferred from BAM to the Caledonian Hospital location, and then been transferred back to BAM, while another had transferred from Caledonian Hospital to BAM.

The employees at all 27 locations wear a uniform consisting of black pants, a white shirt, a baseball cap and a jacket. The pants, cap and jacket all bear the Employer's logo. Employees also carry a laminated identification card bearing the Employer's name. The payroll is all done at the Employer's central Manhattan office, and all employees are paid on the same day. It appears that all labor relations policies relating to wages and benefits are administered at the Employer's central office. Personnel files are also kept at the main office.

As noted above, the Employer maintains that the petitioned-for unit of employees constitutes an accretion to the unit represented by Local 272. In determining whether a unit is an accretion to a pre-existing unit, the Board examines various factors including the size of the respective units, interchange, supervision, integration, geographic

---

<sup>3</sup> Parente estimated that in 1998 there were about 200 permanent transfers and 400 to 500 temporary transfers involving employees working in the Local 272 represented unit.

proximity, community of interest and bargaining history. Safeway Stores, Inc., 276 NLRB 944 (1985); UPF Corporation, 309 NLRB 832 (1992). Interchange is among the most important factors the Board considers when determining whether an accretion exists. Towne Ford Sales, 270 NLRB 311 (1985). Because a finding of accretion forecloses employees of the right to select their own representative, the Board defines accretion narrowly. Silver Court Nursing Center, Inc., 313 NLRB 1141 (1994); Towne Ford Sales, supra. Applying the above criteria to the instant case, I note that there are a number of factors that support a finding of accretion, including the relative geographic proximity of the Brooklyn and Manhattan facilities, the commonality of overall supervision, and the similarity in the work performed. However, there has been virtually no interchange among Brooklyn and Manhattan employees, even involving those employed at the BAM location, which has existed for over a year. Silver Court Nursing Center, supra, Combustion Engineering, 195 NLRB 909, 912 (1972). There are other dissimilarities in terms and conditions of employment among Brooklyn and Manhattan employees, including some differences in wages, and the fact that Brooklyn employees do not receive any pension benefits. Moreover, Local 272 has disclaimed interest in representing the petitioned-for employees, and it would appear particularly inappropriate to impose as a bargaining representative an organization that does not wish to represent the employees in question.<sup>4</sup> In addition, it would appear inconsistent to accrete the employees of the two petitioned-for locations to the Local 272 represented unit without considering whether the remaining Brooklyn locations and the unrepresented Manhattan location also constitute an accretion to this unit, a position that was neither proffered nor litigated during the proceeding. I thus find that the petitioned-for employees do not constitute an accretion to the bargaining unit represented by Local 272.

---

<sup>4</sup> Carr Gottstein Foods Company, Inc., 307 NLRB 1318 (1992).



As to whether the petitioned for unit can, standing alone, constitute an appropriate unit, it is well established that Section 9(b) of the Act does not require that a unit, to be certifiable, be the most appropriate unit. Rather, a unit need only be *an* appropriate unit for bargaining purposes. Morand Bros. Beverage Co., 91 NLRB 409 (1950). The Board recognizes that there is generally more than one way in which employees may be appropriately grouped, and a petitioner is not obligated to seek the most comprehensive grouping of employees for its unit to obtain the Board's imprimatur. Overnite Transportation, Inc. 325 NLRB No. 113 (1998).; Purity Food Stores, 160 NLRB 651 (1956). At the same time, the Board will not find *any* petitioned-for unit to be appropriate, and Section 9(c)(5) prohibits the Board from establishing a unit based *solely* upon the extent of organization. New England Power Co., 120 NLRB 666 (1958); Overnite Transportation, *supra*. To determine whether a petitioned-for unit, as opposed to a broader grouping of employees, is an appropriate unit, the Board examines whether the petitioned-for employees share certain terms and conditions of employment that arguably distinguish them from other employees. Often employees in a petitioned for unit share certain conditions of employment with employees in a broader unit, but have certain distinguishing employment conditions of their own. Among the most important community of interest factors the Board has relied upon to find appropriate a petitioned-for unit, as opposed to a broader unit proposed by an employer, is separate day to day supervision. Employees with the same immediate supervisors are likely to share the same day to day concerns, and these concerns are likely to differ from those of employees who are not supervised by these individuals. Thus, in many cases, where a petitioned for unit, as opposed to a broader unit, has been found appropriate, the Board has relied upon the fact that the petitioned-for employees are not supervised by the same individuals who supervise employees in the broader unit. Thus, in these cases the Board has found that the petitioned-for employees' separate supervision, and the distinct community of interest resulting therefrom, is not outweighed by the interests they share with other employees as

a result of centralized labor relations policies. Courier Dispatch Group, 311 NLRB 728, 731 (1993); Executive Resources Associates, Inc., 301 NLRB 400 (1991); University of Hartford, 295 NLRB 797 (1989); Pratt/North Plaza Associates, 285 NLRB 377 (1987); Omni Dunfey Hotels, Inc., 283 NLRB 475, fn. 1 (1987); Purnell's Pride, Inc., 252 NLRB 110, 113 (1980); Renzetti's Market, Inc., 238 NLRB 174, 175-176 (1978); California Institute of Technology, 192 NLRB 582 (1971); Purity Food Stores, supra.

In the instant case, the Petitioner has failed to establish that the employees in the petitioned-for two-location unit share any terms and conditions of employment that would distinguish their community of interest from that of employees working at other Brooklyn facilities. With regard to immediate supervision, the employees at both the Brooklyn and Manhattan facilities are essentially unsupervised on a daily basis. The same individuals, Parente and to a lesser extent his two supervisors, are responsible for all hiring, firing, discipline and scheduling and transfers throughout the 27 locations. There is insufficient evidence that the manager at Brooklyn Hospital, who is not a supervisory or managerial employee, also manages DeKalb Avenue employees. Thus, one of the principal factors on which the Board has relied to find appropriate less than comprehensive petitioned-for units, is not present in the instant matter. Nor does the fact that the two locations are across the street from each result in a separate community of interest for the petitioned-for employees. Their geographical proximity, in this case, has no impact upon the day to day terms and conditions of employees at these locations. Nor is the interchange confined to the petitioned-for locations. The only interchange involving a petitioned-for employee was a transfer into, and then out of the unit, not a transfer within the unit. Although the benefits of Brooklyn employees arguably differ from those of Local 272 represented employees (Brooklyn employees receive no pension benefits), the record does not establish that the benefits of employees at the two petitioned-for locations differ from those of employees at other Brooklyn locations. Accordingly, insofar as the Petitioner has failed to establish that employees in the

petitioned-for unit have a community of interest separate and apart from that of other Brooklyn employees, I find that the petitioned-for unit is not appropriate.

The Petitioner states that the only other unit in which it would be willing to proceed to an election is a unit that includes employees at the two petitioned-for locations and the five employees at Caledonian Hospital, three miles away. I find this unit to be inappropriate as well. The Petitioner asserts this unit would be appropriate because the Employer operates the three locations pursuant to the same contract (with Brooklyn Hospital), and because it appears that the three locations may eventually constitute a single subsidiary of the Employer. However, there is no evidence that this has any impact upon the terms and conditions of employment of employees at these locations, or that it distinguishes their employment conditions from those of employees working at other Brooklyn locations. As was the case with the petitioned-for two-location unit, there is no evidence that this three-location unit has any distinguishing characteristics in terms of interchange, supervision or wages and benefits. There is no interchange confined to these three locations. It appears that the two petitioned-for facilities are closer to the BAM locations and the remaining Brooklyn facility at Fulton Street, than they are to the Caledonian Hospital location. Thus, these three facilities appear to be an arbitrary grouping of locations that, like the Petitioned-for unit, is being sought solely due to the extent of organization.

Inasmuch as I have found inappropriate the units in which the Petitioner is willing to proceed to an election, I am dismissing its petition.

### **ORDER**

IT IS HEREBY ORDERED that the petition in Case No. 29-RC-9348 be, and it hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by November 16, 1999.

Dated at Brooklyn, New York, this 2nd day of November, 1999.

---

Alvin Blyer  
Regional Director, Region 29  
National Labor Relations Board  
One MetroTech Center North, 10th Floor  
Brooklyn, New York 11201

440 6750 6700  
440 8350